

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1178 of 1997

For Approval and Signature:

Hon'ble MS.JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 TO 5 NO

BRAHMANIA R MANGALOAS

Versus

SECRETARY

Appearance:

MR JK PARMAR for Petitioner
SERVED for Respondent No. 1, 4, 5
MR DA BAMBHANIA for Respondent No. 3

CORAM : MS.JUSTICE R.M.DOSHIT

Date of decision: 03/09/97

ORAL JUDGEMENT

Under order dated 18th January, 1990, petitioner

was temporarily appointed as Kennel Boy in the payscale of Rs. 750-940 by the respondent No.4 herein. It appears that the post of Kennel Boy under the respondent No.4 was not sanctioned by the State Government and, therefore, under order dated 30th May, 1990 the service of the petitioner was terminated. However, under order dated 4th June, 1990, the petitioner was again appointed as Kennel Boy for the consolidated pay of Rs.450/- by way of stop-gap arrangement. It appears that the said arrangement continued for nearly five years. In the meantime, on 18th June, 1991, the Government issued Resolution and revised the pay of part time employees of the Government. In view of the said Resolution, the petitioner's pay was increased to Rs.600/- PM with effect from 1st July, 1991. Upon sanction of a post of a Kennel Boy, under order dated 14th August, 1995, the petitioner was appointed as a Kennel Boy in the payscale of Rs. 750-940 on conditions prescribed in the order of appointment. One of the conditions being, the petitioner would not be entitled to any service benefit for the temporary service rendered on consolidated pay. A formal order to that effect was issued by the respondent No.4 on 26th September, 1995 after the petitioner was examined and found to be medically fit for service. Under order dated 7th December, 1996, the petitioner has been discharged from service. Feeling aggrieved, the petitioner has preferred this petition.

This petition was entertained by the court on 18th February, 1997 and notice was directed to be issued to the respondents. In spite of service of the notice, neither of the respondents presented before this court. On 29th April, 1997, Rule was directed to be issued by this court and was made returnable on 1st September, 1997 and the respondents were directed to file their counter-affidavit, if any, latest by 31st July, 1997. Even today, neither of the respondents is represented before this court, nor any of the respondents has cared to file counter-affidavit.

The petitioner has served as a Kennel Boy under respondent No.4 since January, 1990. On 14th August, 1995, the petitioner was offered regular appointment in the payscale of Rs.750-940 and was later on also examined and found fit by the Medical Board. No justification has been coming forth from either of the respondents in defence of the impugned order dated 7th December, 1996.

Apparently, there is no justiciable reason for terminating the service of the petitioner. Ordinarily, after regular appointment, one would expect to continue service till he reaches the age of superannuation. However, if the service is required to be terminated earlier, it can be done for valid reasons in accordance with the law. In the present case, the respondents have not come forth to establish that the petitioner's service has been terminated for valid reasons in accordance with law.

Petition is, therefore, allowed. Impugned order of discharge of petitioner from service made on 7th December, 1996 is quashed and set aside. Respondents are directed to reinstate the petitioner in service as Kennel Boy on the same terms and conditions referred to in the appointment order dated 14th August, 1995. The period of non-service i.e. period from the date of discharge from service till the date, shall be, on the principle of "no work, no pay" be treated as leave without pay. The petitioner, however, would be entitled to the seniority from the date of his regular appointment as Kennel Boy. The petitioner shall be reinstated in service within one week from the date of receipt of copy of this order. The petitioner shall be entitled to pay and allowances from the date of this order. Rule is made absolute accordingly. Respondent No.4 shall pay the cost of this petition to the petitioner. Cost is quantified at Rs.1,500/-.

4-9-1997

Mr.Bambhania, the learned AGP requests that the counter-affidavit made on behalf of the respondents be taken on record. Request is granted. The affidavit made by Shri I.M.Desai, Deputy Commissioner of Police is ordered to be taken on record.

JOSHI